

Islamic Code Of Life And Uniform Civil Code

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Introduction

We have great pleasure in presenting herewith relevant excerpts from the Presidential Address delivered by Maulana Syed Abul Hasan Ali Nadwi at the 10th Annual Session of All India Muslim Personal Law Board held at New Delhi on 23rd and 24th November, 1991.

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Gentlemen,

We are meeting at a time when the country is passing through constitutional, economic, moral and political crises and the future appears bleak and preservation of life and liberty of conscience doubtful; when Delhi itself is facing many grave problems though it is the seat of the Government. It appears ill-timed to meet and analyze these apprehensions and invite the attention of the powers-that-be, but I will say, without apologies, that it is in-time and in the interest of the country. I wish that all the truth-loving and conscientious persons and all those who have the good of the country at heart should take notice of this Convention as without such analysis and deliberations democratic values cannot endure for long.

It is necessary for the progress and development of the country that the climate of fear, distrust and confusion should be brought to an end as no

country can march forward when the different sections of its population may harbor doubts about their religious tenets, laws, rites and rituals without which it would be difficult for them to live as true followers of their religion. There can be nothing worse than that the energies which ought to be utilized in strengthening and advancement of the country should be spent in dispelling doubts and suspicions. I will go further and say that we have an apprehension that if our future generations do not hold the beliefs which are dearer to us than our lives, then there will be uncertainty and confusion among the Muslims which will not only be harmful to them but to the country also.

Secondly the wide scope of Islam should also be kept in mind. The difference in religions is not confined to minor rites and rituals but in the fundamental principles of religions themselves. There are religions which were founded on

revelations and prophethood, but their followers confined them to acts of worship alone. There is no such thing in Islam. It encompasses the whole of the life of Muslim. It is a basic reality which can not be appreciated without realizing the relations between the Creator and the created. Every Muslim is an obedient servant of God and his relationship with Him is eternal and all-embracing:

“O Ye Who believe! Come, all of you, into submission (unto Him); and follow not the footsteps of the devil. Lo! He is an open enemy for you.” [Baqarah, 208]

It should be clearly understood that the religion of Islam owes its origin to revelation and the last Prophet Muhammad (peace be on him) himself has been directed to follow it, The glorious Qur'an lays down :

“And now have We set thee (O Muhammad) on a clear road of (Our) commandment; so follow it, and follow not the whims of those who know not.” [Jathiya, 18]

When the innocent and beloved Prophet (peace be on him) is being directed to follow it, how then can it be demanded from his followers to change or accept any change in it?

These are the two basic realities which when understood in their correct perspective, there would be no such demands from the Muslims. They would be saved of an avoidable embarrassment and their faculties and energies would not be spent in refuting such unnecessary demands and the government would save time to spend on useful pursuits.

We are told that for the sake of unity and integrity of the country we may accept uniform Civil Code. I ask a question which a school-going child

can answer. The First World War was fought, at the beginning, between Britain and Germany. The Britons and Germans are not only Christians but Protestants and their Personal Law is also the same. Why then did they fight? If the uniform Civil Code could Stop fighting, it should have stopped them. The Second World War is another example. They were both Christian and Protestants and their Personal Law is the same. But they fought as blood thirsty enemies bent on annihilating each other. If we go to law courts we find there are lawsuits between Muslims and Muslims, Hindus and Hindus. The complainant wants to seal the doom of the respondent and vice versa. Their Personal Law is the same and at times, they belong to the same caste and family. In some cases they are blood-related. In fact, the cause of enmity is selfishness, greed and materialism. It is on account of the wrong system and curriculum which has neglected moral

teachings. I can say, indeed challenge, that there would be no change in morality even after the introduction of a uniform Civil Code. Why then uniform Civil Code is mentioned time and again that there be unity by it.

What an eminent British legist E. Bodenheimer, while discussing the system of law and its social importance, has written is enough for us to realize the futility of such a move :

“If the feelings of fairness of a large part of the population are outraged by a system of law purporting to establish an ‘orderly’ condition of life, it will be extremely difficult for the public authorities to maintain such a legal system against attempts at evasion or subversion. Men will not stand long for an order they feel to be totally unreasonable and unbearable, and a government bent on perpetuating such an order will run into serious difficulties of enforcement. Thus an order Which does not have a substantial

anchorage in justice will rest on an unsafe and precarious basis. As John Dickson points out : ‘we came upon the need for not merely a system of fixed general rules, but of rules based on justice, or in other words, on a regard for certain demands and capacities of human nature. Otherwise the system would not be workable; offending ingrained proclivities and standards Of judgment, it will be continually violated and so fail to yield the certainty which is the excuse for its existence.”

**E. Bodenheimer, Jurisprudence, Harvard,
1967, p. 213**

We should also keep in mind that if any law clashes with the fundamental beliefs of any section of population, sect or religion then it would not create unity, cooperation, sincerity and peace of mind but create confusion, lack of interest and a sense of compulsion and serfdom

which is dangerous for the unity of the nation and the country.

Gentlemen,

The religion which has reached us and of which we are the trustees, has not reached us through social workers, reformers or empire-builders.

They are worthy of our respect. But there is a line of demarcation in between religion, culture and school of thought which differentiates one from the other. This demarcation cannot in any circumstances be ignored. It is that the revealed religions have reached us through specially selected persons who were consecrated with prophethood and who used to receive revelations. The ignorance of this delicate, yet very important point creates confusion and most of the people expect or make such demands from us (the Muslims) for which there is absolutely no scope or sanction. Some people show their broad-mindedness and assume the responsibility

of interpreting religion in a way as if it were a philosophy, or cultural or social system or an economic theory.

So far as the Muslims are concerned it is part of their faith and belief that their Personal Law is Divine and ordained by the same God Who revealed the glorious Qur'an and fundamental beliefs and the system of worship and without which one cannot remain a Muslim. It means that the law has been decreed by All Knowing God Who has created man and Who knows his natural wants and weaknesses.

“Will not He Who has created know? He is the Subtile, the Aware.” [Mulk, 14]

Gentlemen,

The Muslims of India gave such proof of their adherence to ‘Shariat’ and attachment to their religion after the Shah Bano case the parallel Of which is not found in any religious movement in

the long and past history of the ‘Millat’. There were big meetings from Kashmir to KanyaKumari and in all such meetings members of the Muslim Personal Law Board and Other Muslim Scholars were present. The gathering of a lakh of people even in small towns was not uncommon. It is estimated that about half-a-million people gathered at a public meeting at the historic Shahid Minär Park, Calcutta on 7th April, 1985 on the occasion of Annual Session of All India Muslim Personal Law Board. Over and above these meetings thousands of telegrams and resolutions passed at such meetings were sent to the Prime Minister. Shri Rajiv Gandhi.

Besides, these country-wide meetings (in which discipline and dignity were strictly observed) the office bearers of the Board met the Prime Minister, Shri Rajiv Gandhi and at his behest they met the Law Minister, Shri Ashok Sen and others. The members met the Prime Minister twice or

thrice in an informal atmosphere and had a free and frank discussion with him and impressed on him the seriousness of the problem and placed the religious point-of-view and the feelings of the Muslim Community on their Personal Law with sincerity. He heard our views with attention (he must have received reports Of unrest amongst Muslims and the big public meetings in this connection). He was convinced that it is a purely religious problem of the Muslims and it can be interpreted by such scholars who have deep and wide study of Islam and they are the true exponents Of glorious Qur'an, religion, and 'Shariat'. The Muslims do not want to gain political mileage out of it. He spoke more than once that he has exchanged views with eminent Muslim Scholars and he is convinced that Islam protects the rights of women including divorcees in a better way than the present laws in force. He presented the Protection of Rights of Muslim

Women Bill, 1986, in the Parliament with great moral courage and sense of responsibility and issued a whip to the members of his party. The said Bill was passed with thumping majority on 6th May, 1986, and the Muslim Community, which has not been deprived of the capacity to differentiate between right and wrong, sincerity, and politicking offered thanks with an open heart and expressed their satisfaction over this bold step.

It is now necessary that the law courts be instructed either through the Supreme Court or Law Ministry that the Protection of Rights of Muslim Women Act, 1986 is the current Act and it should be applied and implemented in all cases of Muslim divorcees. It is, however, found that the law courts are ignoring the said Act and still deciding such cases by reference to section 125 of Cr. P. C. The recent judgments by Gujarat and Kerala High Courts are the examples of turning a

blind eye to this new Act. It is also found that the lawyers are either ignorant of the new Act and they do not plead that this Act should be applied in all cases of divorce. It is also necessary that the legal profession should be educated in this regard else ignorance and laxity in this respect will continue and the said Act will adorn the archives of the law courts. A representative delegation of the Board met Shri V. P. Singh during his tenure of Prime Ministership and invited his attention to the responsibility of the Government in this aspect. He promised to look into it. It is, however, necessary to continue our efforts in this direction.

Gentlemen,

I would like to say a few words to our countrymen, intellectuals and journalists who reacted with vehemence over the feelings of the Muslims in the Shah Bano Case as also over the Protection Of Rights of Muslim women Bill 1986

when it was presented in the parliament and decried it as unjust to Muslim women.

It should be kept in mind that there is a difference in social system, family life and environment in Muslim and non-Muslim societies as regards religious law and conventions. That a girl after marriage in Muslim society is not cut-off from her family during married life and after, unfortunate divorce, she remains a member of the family and continues to have a share in that family property according to ‘Sharia’ which has been described in detail in the glorious Quran. It has also emphasized the need to pay her share. She can also claim it as a right and the law courts are bound to decide in her favor. Whoever goes against it, he is considered a sinner since it is regarded as defiance of Divine “Shariat”.

As against this, I may say with apologies, that in the Hindu society a girl after marriage is almost cut-off from her parents and the family. The

liability for her maintenance becomes the sole responsibility of her husband. The Hindu widow becomes all alone and so to say an orphan. The responsibility of her guardianship, maintenance and protection does not depend on her family and it becomes difficult for her to live a respectable life. This practice has been prevalent for a long time and it has probably forced the Hindu widows to commit “Sati” which was the only way to avoid a forlorn life in destitution. It has become a matter of pride in respectable families. The Muslim Rulers did not stop it as it might be construed as interference in religion. Dr. Bernier has mentioned in his travelog that the ladies from the ruling and respectable Muslim families used to dissuade the Hindu widows from committing “Sati”. The British Government prohibited it. But it is still practiced in some places, especially in Rajasthan.

Besides pointing out this difference in Muslim and non-Muslim societies, which was resorted to out of compulsion, it must be clearly understood that a Muslim divorcee does not become destitute and forced to beg or end her life. She can live with respect with her relations.

I would, with due respect, invite the attention of our critics and fault-finders to pay more attention to the curse of bride-burning and dowry deaths which occur almost every day in our country.

The hue and cry raised in the Shah Bano case and during the presentation of the Protection of Rights of Muslim Women Bill, 1986 was out of all proportion. We should look at our problems in their correct perspective and should not try to make a mountain of a molehill. It is against common sense.